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Joe S. Abuan

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EXAMINER

DURAN, ARTHUR D

ART UNIT

PAPER NUMBER

3622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/935,085

Applicant(s)

ABUAN ET AL.

Examiner

Arthur Duran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 28-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 28-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Claims 1-3 and 28-51 have been examined.

#### ***Response to Amendment***

2. The Amendment filed on 4/9/2007 is insufficient to overcome the prior rejection.

#### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/9/2007 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 and 28-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dialpad.com (Dialpad.com screenshots from 8/17/2000 and prior obtained via [www.archive.org/The Wayback Machine](http://www.archive.org/The_Wayback_Machine)) in view of Landsmann (6,314,451).

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Claim 1, 36, 37, 44, 49, 50: Dialpad.com discloses a method of providing dynamically updated audio data comprising:

- downloading at least one multimedia file including audio advertisement data;
- downloading configuration instructions for controlling broadcast of at least one audio advertisement based at least in part on a status of a conferencing link over a network; and
- broadcasting said audio advertisement data in accordance with said configuration instructions (see Dialpad.com screenshots enclosed).

Also, note that the Dialpad.com press release from 1/12/2000 states that a variety of multimedia files can be utilized including audio data. Also, note that these files can be rotated before, during or after the telephone calls. Also, note that 'audio ad bumpers' can be played on the front and/or back end of calls. Also, note that the Java applet is downloaded to the users computer from a website.

Dialpad.com does not explicitly disclose that or when advertisement data is download to the user computer.

However, Dialpad.com discloses that advertisement data is presented to the user before, during, or after the telephone call made by the user. Also, note that Landsmann further discloses motivation for download advertisements such that they are ready for display and the downloading advertisements such that they are ready for display (Abstract; col 3, line 52-col 4, line 27). Therefore, it would be obvious to one skilled in the art that advertisement data/info can be downloaded to the user before, during, or after the telephone call made by the user or at anytime the user accesses the dialpad.com website. One would be motivated to do this in order to have the advertisement ready to present without delay.

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Additionally, Applicant's Specification does disclose a communications link and the status of a communication session:

“[0016] In another aspect of the invention, a method is provided for advertising to users of a communications system, which provides communications between a caller and destination audio receiver. The method includes accessing a web page using a browser; retrieving audio advertisement processing information; and downloading a front audio ad module and a bumper audio ad module. The front audio advertisement is played as the caller establishes a communication link. The bumper audio advertisement is played after the caller terminates the communication link.

[0063] In action 508, audio advertising module 23 causes a first audio to be played to the caller from the included audio ad files provided. After the hard coded ad has played, the caller's communication with the destination audio communications device 18 (action 510) commences. In action 512, audio advertising module 23 periodically checks the status of the communication session to realize if the communication session is continuing or has terminated. If the call has not terminated, no action is taken. If the caller has terminated the communication session, audio advertising module 23 causes a second hard coded audio ad to be played for the caller (action 514). The caller is then directed back to applet 24 to either place another call or to terminate the communication session.”

Applicant's Specification (cited preceding) and Applicant's Figures indicate that advertisements can be presented before or after the calls.

And, the Dialpad.com and Rejection above disclose that advertisements can be presented before, during, or after the calls. Hence, the advertisements are presented based on the status of the communications link/session. That is, the advertisements are sent before or during or after communications have been made.

Hence, Dialpad.com discloses these features.

And, Dialpad.com discloses a local Java applet downloaded to the user device that displays or plays the advertisements to the user. And, since the local Java applet displays the dialpad, associated advertising, and audio advertising, it is obvious that the local Java applet can

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receive or has the necessary instructions for displaying the associated advertising or playing the audio advertising. Hence, the instructions for displaying the advertising/audio advertising through the local Java applet can be downloaded when the Java applet is downloaded or can be downloaded along with the advertising content. Either way, the Java applet receives instructions for the advertisements/audio advertisements that are displayed through the local Java applet.

Also, Landsman was added to Dialpad.com for Landsman's more explicit disclosure concerning downloading of information. There is nothing in Dialpad.com or Landsman that would prevent the combination from downloading information.

Additionally, Landsman discloses that advertisements are downloaded to the user device and also that instructions for displaying the advertisements can be downloaded to the user device

(Landsman, Figures 5, 6a, 6b; and below citations):

“(72) Advantageously, the AdController applet can readily function in a wide variety of environments, without changes to the coding of the applet itself. This is accomplished through downloading of an external configuration file (specifically file 620 shown in FIGS. 6A and 6B, which will be discussed below), as part of the applet files, from agent server 15. Suitably changing parameter values in the configuration file permits the behavior of applet 424 to be readily changed to suit a desired environment without a need to utilize a different version of that applet for each different environment, otherwise requiring different software classes and with attendant modifications and re-compilation.

(73) Execution of AdController applet 424 begins by Transition Sensor applet 422 calling a standard init Applet method, which downloads the external configuration file, followed by extracting and saving its configuration parameters. These parameters are supplied, as symbolized by line 515, to the AdController applet, during its execution in order to define its behavior given its current execution environment (col 27, lines 9-27);

[Claim] 1. Apparatus for use in rendering an information object, comprising a web advertisement, through an executing web browser and in response to a first web page provided to the browser, the apparatus comprising:

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a processor;

a memory connected to the processor and storing both computer executable instructions and the first web page, the first web page having a plurality of computer readable instructions representing page content and code, the code comprising an advertising tag; and

an output device responsive to the processor;

wherein the processor, in response to the executable instructions and the code:

dynamically writes a plurality of predefined applet tags, that collectively implement a script, into the first web page;

downloads in response to subsequent execution of the script, an agent from a corresponding network server into the memory; and

thereafter instantiates and executes the agent under web browser, the agent having an applet, wherein the applet:

issues a request, via a network connection, to a specified network server to download a manifest file for the information object from the specified network server, wherein the manifest file comprises a manifest of names of a plurality of predefined informational files that collectively comprise part of the information object, a network address at which each of the informational files can be accessed and associated configuration information necessary to properly render the information object;

accesses and downloads, to the memory, each informational file, specified in the manifest file, from its corresponding network address, to the extent said each informational file does not then reside within the memory; and

in response to an occurrence of a user-initiated event, as detected by the agent through monitoring a user click-stream, which initiates a transition from the first web page to a second web page and which signifies a start of an interstitial interval:

ceases any further download of the manifest file or any informational file specified in the manifest file, to the extent any downloading of said manifest file or said any informational file is then occurring; and

initiates processing, through the browser, of informational files for a previously downloaded information object so as to render the previously

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downloaded object during an interstitial interval to the user”.

Additionally, in regards to the features of that the downloadable configuration instructions create a plurality of audio ad sets, each set defining selection of and broadcast control of at least one audio advertisement.

Examiner notes that these features were read in light of the Applicant's Specification on pages 14, lines 12-22 and page 15, line 24-page 16, line 6 as indicated in the Remarks on page 9. Also, note that the set of advertisement can be at least one ad. Hence, the set can be one to many ads.

And, Dialpad.com discloses the above features as interpreted in light of the Specification cited.

Examiner notes that Applicant's Specification states (page 15, line 24-page 16, line 6):

“[0070] FIG. 7 is a flow diagram illustrating process 700 for establishing a communication between the caller and destination audio communications device 18 (FIG. 1) using dynamically downloaded and targeted audio ads in accordance with one embodiment of the present invention. In action 702 of process 700, the caller initiates the use of communication system 10 by following the login process discussed above. In this embodiment, the login information can be correlated with data previously collected about each caller. For example, during the initial login process, callers may be prompted to provide demographic information, such as age, gender, zip code, marital status, likes and dislikes and other similar information. This information may be used to target the caller with audio advertisements, which would appeal to the particular caller. Audio advertisements can be grouped into sets of audio advertisements that correspond to certain demographic data. Thus, in action 704, a determination is made based upon the identity of the caller (i.e. the ID name) as to which audio ads are best suited to be delivered to the caller. For example, a caller who is female and enjoys the outdoors maybe targeted with an advertisement for camping equipment or a mountain bike, while another female who does not enjoy outdoor activity may be targeted with an advertisement for a women only day spa.

[0071] The completion of the login process and selection of a targeted audio ad set, initiates the launching of applet 24 (FIG. 3B), which begins the process



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of dynamically loading audio advertising module 23 (FIG. 4) on the caller's PC (action 706), including audio ad configuration files, such as a plurality of multimedia files."

Additionally, Dialpad.com, under the Advertisers section on pages 1 and 2 (of 4) discloses targeting segments of users for advertising by demographics and/or profile information (see Applicant's Specification page 15-line 24-page 16, line 6 or paragraphs [70, 71], preceding).

Additionally, Landsman discloses displaying pre-stored advertisements at specifically specified time intervals (col 4, lines 34-42); selecting advertisements to be downloaded to the user device based on user-id, user preference information which is stored at the user device (col 5, lines 20-30); targeting user preferences and profile and configuration instructions for frequency of ad display or not duplicating the display of ads (col 6, lines 29-41; col 21, lines 10-30). Landsman further discloses downloading an Ad Controller to the user devices where the Ad Controller controls presentation of advertisements to the user including timing and frequency of ad presentation (Figures 1A-1F; col ; col 32, lines 1-25; col 21, lines 10-30). Landsman further discloses that multiple advertisements or ad sets or advertising files can be downloaded (claim 2 and 1).

Hence, the combination of the prior art renders obvious that the downloadable configuration instructions create a plurality of audio ad sets, each set defining selection of and broadcast control of at least one audio advertisement.

Additionally, Examiner notes that pages 1 and 2 of the Dialpad.com section entitled "advertisers" or "Page 1 of 4" clearly discloses these features. Please see the "advertisers" section and the "Audience", "Breakdown", "Targeted Segments", "Interest Categories",

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“Tracking”, “Customized Opportunities” sections within this “advertisers” or “Page 1 of 4” section.

And, Examiner notes that Applicant’s Specification states in regards to ad sets the following:

“[70]. . .Audio advertisements can be grouped into sets of audio advertisements that correspond to certain demographic data.”

Also, the prior art renders obvious:

downloading configuration instructions that create a plurality of audio ad sets, the instructions for each set defining selection and broadcast control of a plurality of audio advertisements based at least in part on a status of an audio communication link over a network and a relationship between the audio communication link and another attempted audio communication link.

Examiner has interpreted the claim features in light of the Specification and particularly in light of the Specification sections cited preceding (Applicant’s Specification page 14 and page 16).

Also, the status of the audio communication link is interpreted in light of Applicant’s Specification ([63]).

And, as noted on page 9 of the Applicant’s Remarks dated 4/9/2007, Dialpad.com “discloses audio ad bumpers on the front and back end of calls.” Hence, Dialpad.com discloses advertising based on the status of the communication link (ad bumpers are presented based on the status of the call). And, as noted in the preceding section concerning the “advertisers” or “Page 1 of 4” section of Dialpad.com, Dialpad.com discloses demographic data or targeted

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advertising for the advertisements and/or audio ad bumpers. Hence, Dialpad.com discloses ad sets or a plurality of ad sets.

Also, in regards to the “relationship between the audio communication link and another attempted audio communication link” features. These features are interpreted in light of the Applicant’s Specification and particularly page 16, lines 20-25 of the Applicant’s Specification. And, Dialpad.com discloses “unlimited phone calling” page 2 of the “Page 1 of 8” section and also the dialpad figure on page 2 of the “Page 1 of 3” section. Also, Dialpad.com discloses “advertising campaigns” with multiple advertisements on page 2 of the “advertisers” or “Page 1 of 4” section. Hence, Dialpad.com discloses that there are numerous calls and that numerous advertisements can be presented to the user. And, Dialpad.com discloses rotating ads or “rotating banners” on page 1 of the “Page 1 of 2” section that is titled, “Dialpad.com hits 2 million members in first 12 weeks”. Hence, Dialpad.com discloses presenting different ads for numerous calls that are made by a user(s).

And, in regards to where the functionality occurs in Dialpad.com, as noted in the prior rejection, Landsman discloses that functionality can occur at the user device.

Hence, the combination of the prior art renders obvious downloading configuration instructions that create a plurality of audio ad sets, the instructions for each set defining selection and broadcast control of a plurality of audio advertisements based at least in part on a status of an audio communication link over a network and a relationship between the audio communication link and another attempted audio communication link.

Claims 2, 38, 45: Dialpad.com discloses the method of claim 1 further comprising:  
downloading additional audio advertisement data; and

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broadcasting said additional audio advertisement data in accordance with said audio configuration instructions (see Dialpad.com screenshots).

Claims 3, 33, 39, 46: Dialpad.com discloses the method of claim 2, further comprising: interrupting said downloading of said additional audio data; establishing the conferencing link; and thereafter resuming said downloading of said additional audio data (see Dialpad.com screenshots and the rejection of claim 1 above). Dialpad.com does not explicitly disclose interrupting the downloading of advertisements. However, Examiner notes that it is old and well known that initiating a command in a website can cancel priorly initiated actions or downloading activity on a website. As an example of this, Landsman discloses interrupting the downloading of advertising data when a user initiates a particular command for content or action of interest to the user (col 10, line 30-col 11, line 35). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Landsman's interrupting advertising downloading to Dialpad.com's downloading advertising and initiating user commands. One would have been motivated to do this in order to promptly attend to user actions of interest.

Claim 28, 40, 47: Dialpad.com discloses the method of Claim 1, wherein the status of the conferencing link is controlled using a browser interface to a conferencing website (see Dialpad.com screenshots).

Claim 29: Dialpad.com discloses the method of Claim 1, wherein the status of the conferencing link comprises one of the following; initiated, active, and terminated (see Jan 12, 2000 news release screenshot).

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Claim 30, 41: Dialpad.com discloses the method of Claim 1, wherein the configuration instructions cause the broadcasting of said audio advertisement data to occur at one of the following:

before the conferencing link is active and after the conferencing link is active (Dialpad.com screen shots; Dialpad.com Press Release from January 12, 2000).

Claim 31, 42: Dialpad.com discloses the method of Claim 2, further comprising modifying the audio advertisement data based at least in part on the additional audio advertisement data (see advertisers screenshot, Customized Opportunities; ).

Claim 32, 48: Dialpad.com discloses the method of Claim 1, wherein the configuration instructions include at least one of the following:

an identifier of the audio advertisement data, a storage location of the audio advertisement data, a sequence in which the audio advertisement data is to be broadcast, a frequency at which the audio advertisement data is to be broadcast, a combination of portions of the audio advertisement data to be broadcast, an association of the audio advertisement data with graphical advertisement data, a number of times the audio advertisement data is to be broadcast and a period between broadcasting one portion of the audio advertisement data and another portion of the audio advertisement data (see Dialpad.com Press Release from January 12, 2000).

Also, Dialpad.com discloses the features of an association of the audio advertisement data with graphical advertisement data (Dialpad.com Press Release from January 12, 2000). It would be obvious to one skilled in the art that Dialpad.com can combine the disclosed

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multimedia, graphic, banner, audio advertisements. One would be motivated to do this in order to present an advertisement of interest to the user.

Claim 34: Dialpad.com discloses the method of Claim 1, wherein the audio advertisement data is based at least in part on profile data associated with a user of the conferencing link (see company screenshot; see help screenshot; "What is your privacy policy?").

Claim 35: Dialpad.com discloses the method of Claim 1, wherein the conferencing link comprises a voice over internet protocol link (see technology screenshot).

Claim 43: In regards to the device being a mobile device, MPEP Section 2144.04.V.A states that making a device portable or movable is an obvious variation.

Claim 51: Dialpad.com discloses that the conferencing link includes a telephone link (see Dialpad.com screenshots).

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are not found persuasive.

On page 8 of the Applicant's Remarks dated 4/9/2007, Applicant states, "Applicants respectfully note that the FOA indicates that "Dialpad.com, under the Advertisers section on pages 1 and 2 (of 4) discloses targeting segments of users for advertising by demographics and/or profile information (see Applicant's Specification page 15-line 24-page 16, line 6 or paragraphs [70, 71 ], preceding.)." Applicants respectfully note that the FOA cites page numbers of Dialpad.com that Applicants could not identify in the copy of Dialpad.com received. Applicants request clarification of the citation."

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Examiner responds with the following, in Public Pair for Patent Application 09/935,085, there is listed under the Image File Wrapper section with the date of 5/19/2006 a link for NPL Documents that are listed as 50 pages in length. This NPL document is not available through Public PAIR but should be available through Private PAIR. Copies of these NPL documents were mailed to the Applicant. The Examiner has looked at this NPL document through the IFW system available to Examiners to ensure that the document was properly scanned. The document was properly scanned. In the 50 page scanned document, there is a section entitled 'advertisers' at the top left. This section also has the words "Page 1 of 4" at the top right. This "advertisers" or "Page 1 of 4" section which has 4 pages is listed as pages 32-35 of the entire 50 pages NPL document. The Examiner has cited pages 1 and 2 of this document. These pages are again included in this Office Action.

On page 9, Applicant states:

"However, the FOA does not appear to refer to the specification to interpret the related claim language each set defining selection and broadcast control of at least one audio advertisement based at least in part on a status of an audio communication link over a network. Instead, the FOA relies on a portion of Dialpad.com that discloses audio ad bumpers on the front and back end of calls. Applicants respectfully disagree that such disjointed interpretations/citations can be combined to render Applicants' claims obvious. Dialpad.com does not disclose or suggest demographic data or targeted advertising for the audio ad bumpers. The FOA appears to be using hindsight from the specification rather than the actual claim language."

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However, Examiner notes that pages 1 and 2 of the Dialpad.com section entitled “advertisers” or “Page 1 of 4” clearly discloses these features. Please see the “advertisers” section and the “Audience”, “Breakdown”, “Targeted Segments”, “Interest Categories”, “Tracking”, “Customized Opportunities” sections within this “advertisers” or “Page 1 of 4” section.

Examiner further notes that it is the Applicant’s claims as stated in the Applicant’s claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

And, Examiner notes that Applicant’s Specification states in regards to ad sets the following:

“[70]. . .Audio advertisements can be grouped into sets of audio advertisements that correspond to certain demographic data.”

On page 9, Applicant states that the combination of the prior art does not render obvious:

“downloading configuration instructions that create a plurality of audio ad sets, the instructions for each set defining selection and broadcast control of a plurality of audio advertisements based at least in part on a status of an audio communication link over a network and a relationship between the audio communication link and another attempted audio communication link. Support for the amendments is found throughout the specification,



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including page 14, lines 1-22 and page 16 lines 23-24. Dialpad.com and Landsman do not disclose or suggest downloading instructions with such characteristics.”

Examiner has interpreted the claim features in light of the Specification and particularly in light of the Specification sections cited preceding (Applicant’s Specification page 14 and page 16).

Also, the status of the audio communication link is interpreted in light of Applicant’s Specification ([63]).

And, as noted on page 9 of the Applicant’s Remarks dated 4/9/2007, Dialpad.com “discloses audio ad bumpers on the front and back end of calls.” Hence, Dialpad.com discloses advertising based on the status of the communication link (ad bumpers are presented based on the status of the call). And, as noted in the preceding section concerning the “advertisers” or “Page 1 of 4” section of Dialpad.com, Dialpad.com discloses demographic data or targeted advertising for the advertisements and/or audio ad bumpers. Hence, Dialpad.com discloses ad sets or a plurality of ad sets.

Also, in regards to the “relationship between the audio communication link and another attempted audio communication link” features. These features are interpreted in light of the Applicant’s Specification and particularly page 16, lines 20-25 of the Applicant’s Specification. And, Dialpad.com discloses “unlimited phone calling” page 2 of the “Page 1 of 8” section and also the dialpad figure on page 2 of the “Page 1 of 3” section. Also, Dialpad.com discloses “advertising campaigns” with multiple advertisements on page 2 of the “advertisers” or “Page 1 of 4” section. Hence, Dialpad.com discloses that there are numerous calls and that numerous advertisements can be presented to the user. And, Dialpad.com discloses rotating ads or

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“rotating banners” on page 1 of the “Page 1 of 2” section that is titled, “Dialpad.com hits 2 million members in first 12 weeks”. Hence, Dialpad.com discloses presenting different ads for numerous calls that are made by a user(s).

And, in regards to where the functionality occurs in Dialpad.com, as noted in the prior rejection, Landsman discloses that functionality can occur at the user device.

Hence, the combination of the prior art renders obvious downloading configuration instructions that create a plurality of audio ad sets, the instructions for each set defining selection and broadcast control of a plurality of audio advertisements based at least in part on a status of an audio communication link over a network and a relationship between the audio communication link and another attempted audio communication link.

Also, Examiner notes that it must be presumed that the artisan knows something about the art apart from what the references disclose. In re Jacobv, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby. Also, the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint of suggestion a particular reference. In re Bozek, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F.2d 656, USPQ 12 (CCPA 1977).

Also, Examiner notes that the person of ordinary skill in the art is a hypothetical person who is presumed to know the relevant prior art. Custom Accessories, Inc. v. Jeffrey-Allan

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Indus., Inc., 807 F.2d 955,962, 1 USPQ2d 1196, 1201 (Fed. Cir. 1986).

In determining this skill level, the court may consider various factors including "type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field." *Id.*, cited in *In re GPAC*, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995). In a given case, every factor may not be present, and one or more factors may predominate. *Id.* at 962-63, 1 USPQ2d at 1201.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a) Business 2.0, July 11, 2000, 'Got Fiber?'
- b) Internet Telephony Product Reviews, July 2000, Dialpad.com
- c) Dialing From Your Desktop May 25, 2000, PC Magazine; PC Magazine picks

Dialpad.com as Editor's Choice (June 6, 2000)

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All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arthur Duran  
Primary Examiner  
Art Unit 3622

4/18/2007